With regard to the 4th appellant, who is the father of the 2nd appellant and the employer of the 1st and 3rd appellants, there is not a tittle of evidence on the record to justify his ever having been charged with voluntarily causing hurt to the complainant. He was discharged at the end of the trial. But, immediately after his discharge the learned Magistrate called upon him to show cause why he should not execute a bond to keep the peace. The record, on that aspect of the case, is as follows :—

I call on Defendant No. 4 to show cause why he should not execute a bond to keep the peace for a period of 6 months. Defendant's son has been convicted. Two of his employees have been convicted and he himself is suspected by the complainant of being concerned in the assault. Defendant No. 4 says he has nothing to do with the case and has nothing more to say. I therefore order Defendant No. 4, Lee Chye Choo, to execute a bond to keep the peace in two sureties of $5,000 each for a period of six months.

The learned Magistrate has failed to comply with the provisions of section 73 of the Criminal Procedure Code that he should enquire into the truth of the information on which he acted. The record discloses that the Magistrate acted against the 4th appellant on mere suspicion. That is not enough.

In view of the learned Magistrate having ignored the mandatory provisions of section 73 of the Criminal Procedure Code the appeal of the 4th appellant must be allowed. If the 4th appellant has executed any bond, it must be vacated.

Order accordingly.

LEONG WENG MAY v. LIM CHOON KEE

[O. C. J. (Gordon Smith Ag. C.J.) August 25, 1948]

[Singapore — Suit No. 529 of 1947]

Practice — R.S.C., O. 16, r. 25(2) & 26 — Costs in In Forma Pauperis cases — Special circumstances.

In this case judgment was given for the plaintiff who claimed *in forma pauperis*. It was argued that the Defendant was well able to pay the costs and therefore full costs should be awarded against him.

Held: (1) the ability of an unsuccessful defendant to pay the plaintiff's advocate's costs is not a special circumstance under Order 16, r. 25(2); (2) there were no special circumstances in this case to enable the Court to exercise the discretion contained in r. 26.

Case referred to :—

(1) *Jackson and Jackson v. Barwell* (1936) 2 All E.R. 1588.

CIVIL SUIT IN FORMA PAUPERIS.

R. C. H. Lim for the plaintiff.

N. N. Leicester for the defendant.

Gordon Smith Ag. C.J.: —At the conclusion of the hearing of this case I gave judgment for the plaintiff for the amount claimed ($697.31) and then there arose the question of costs, the plaintiff being a pauper and having been represented by Mr. Richard Lim. It was alleged that the defendant was well able to pay the costs, including profit costs of the pauper-plaintiff's advocate, and I reserved this question, as I wanted to refer to the cases quoted under Order 16 rule 25(2). I have now had an opportunity of doing so. It is clear from *Jackson and Jackson v. Barwell*[1] that the ability of an unsuccessful defendant to pay the plaintiff's advocate's cost was not a special circumstance as described in the Rule.

I have referred to all the local cases quoted but can find nothing helpful in any of them as to what constitutes special circumstances. In fact I cannot see what special circumstances there were and the case was certainly not prolonged by the conduct of the defence — either at the hearing or by any previous unnecessary applications.

I cannot, therefore, exercise the discretion contained in this rule but I can see nothing in Rule 26 which precludes me from making an order thereunder. This I am pleased to do for a small amount, more by way of a token of appreciation by the plaintiff out of the money recovered, for the excellent services rendered by his advocate.

The order will, therefore, be that the defendant pay the out of pocket expenses and disbursements of the plaintiff and his advocate and that the advocate receive out of any money received by the plaintiff in the cause one-seventh of any such amount. If the full amount is recovered, such amount will be approximately $100.00, and I think that such amount is some recompense for the time and trouble taken by Mr. Lim on the plaintiff's behalf.

Order accordingly.